IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2387 OF 1992.

1. Shaikh Abdul Reheman Mohammad Ashraf]
age 43 years, residing at House]
No.41, Gokhale Road, Bhangarwadi,]
Lonavala, Tal. Mawal, Dist. Pune.]

2. Shri Shaikh Jafar Mohamed Ashraf,]
adult, Occ. Rickshaw driver,]
residing at Block No.3, House No.7,]
"E" Ward, Lonawala, Tal. Maval,]
Dist. Pune.] .. Petitioner

Versus

Shri Shaikh Mohamad Haji Papamiya,]
Adult, Occupation Nil, residing at]
House No.7-E, Ward, Lonavala,]
Taluka Mawal, Dist. Pune.] .. Respondent

Mr. S.V. Pitre for the petitioner.

Mr. S.M. Mhamane for the respondent.

CORAM: ANOOP V. MOHTA, J.

DATED: 9TH AUGUST, 2005

ORAL JUDGMENT. :

1. The petitioners are the tenants in respect of three rooms on the ground floor bearing Block No.3, House No.7, E Ward, Lonavala, Taluka Mawal, District Pune. The respondent is the landlord. The premises in question was let out initially to the father of the

petitioners by the father of the respondent, but there was no agreement as such between the parties. The father of the petitioners used to pay Rs.6.50 per month, excluding electricity bill and water charges. After the death of the father of the petitioners, his wife Mumtazbi, two sons and one daughter were residing in the said premises. The respondent used to issue rent receipts in favour of Mumtazbi. She expired and thereafter, the respondent used to issue the rent receipts in the name of petitioner No.1 being the eldest son in the family. Petitioner No.2, being the brother of petitioner No.1, along with his sister, enjoyed the possession of the premises thereafter. After the marriage of petitioner No.1, as the premises was insufficient, he constructed a house and shifted. Petitioner No.2 has been residing in the said premises since then with his family.

2. By notice dated 21st May 1986, the respondent terminated the tenancy on the ground of non-payment, subletting and acquisition of suitable accommodation. The same was resisted by petitioner No.1 only and not by petitioner No.2. Respondent-landlord, thereafter instituted Regular Civil Suit No.90 of 1986 in the Court of Civil Judge, Junior Division, Vadgaon (for short

"Trial Court") for possession of the suit premises. The petitioners appeared and contested the same. On 18th February, 1989, the Trial Court, after considering the material, as well as, the evidence led by the parties, dismissed the suit basically on the ground of protection as available under Section 5(11)(a), as contemplated under the Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947 (for short "The Bombay Rent Act"). Therefore, the respondent-landlord preferred Civil Appeal in the Court of Additional District Judge, Pune (for short "Appellate Court"). By an impugned judgment and order dated 23rd April, 1992, the Appellate Court has allowed the Appeal and granted the decree for possession by holding that petitioner No.1-defendant No.1 has acquired the suitable residential accommodation and he is not using the suit premises for the purpose for which it was let out, for a period of more than six months and further that petitioner No.1 has let out the said suit premises to petitioner No.2-defendant No.2. Therefore, this Writ Petition by the petitioners-tenants.

3. Heard Mr. S.V. Pitre, the learned counsel for the petitioners-tenants and Mr. S.M. Mhamane, the learned counsel for the respondent-landlord. There is

no dispute in the present case that after the death of the original tenant, the respondent-landlord had issued the rent receipts in the name of Mumtazbi and after her death, the rent receipts have been issued by the respondent-landlord in the name of petitioner No.1. There is no dispute that, being brothers, petitioner Nos.1 and 2 were residing together in the premises in question. There is no dispute that after the marriage of petitioner No.1, he constructed the suitable accommodation/premises and left the premises in question. Since then, petitioner No.2 has been in possession of the suit premises. During all this period, petitioner No.1 paid the rent of the premises and the rent receipts were accordingly issued by the respondent-landlord. There is also no dispute that at any point of time, petitioner No.2 requested to transfer the tenancy in his name and/or to issue rent receipt in his name. The landlord, therefore, throughout recognised petitioner No.1 as the tenant of the premises, being the heir and legal representative of the original tenant after the death of Mumtazbi. The demand notice in question was also issued only against petitioner No.1. There was no resistance or reply filed by the petitioners. Therefore, for all purposes, there was landlord-tenant relationship between the respondent-

landlord and petitioner No.1 only. In this backdrop, therefore, petitioner No.2 has no relationship of the landlord or the tenant, being heir or legal representative of the original tenant. Respondent-landlord never recognised petitioner No.2 as the tenant of the premises for any purpose. The respondent-landlord, in this background, filed the suit for eviction, treating petitioner No.1 as tenant and petitioner No.2 as sub-tenant on the allegation that the petitioner No.1 has acquired suitable accommodation, he was in arrears of rent and that he unauthorizedly sublet the premises to petitioner No.2. The Appellate Court has rightly accepted the said foundation and granted the decree for possession.

4. The relevant scheme of the Bombay Rent Act has been explained by the Apex Court in **Vasant Pratap Pandit Vs. Dr. Anant Trimbak Sabnis** 1994, Mh.L.J., 145 while dealing with Section 5(11)(c)(i) read with Section 15(1) of the Bombay Rent Act and observed as under:

> "The words "as may be decided in default of agreement by the Court" as appearing in section 5(11)(c)(i) are not without significance. These words in our view have been incorporated to meet a situation where there are more than one heirs. In such an eventuality the landlord may or may not agree to one or the other of them

> being recognised as a 'tenant'. In case of such disagreement the court has to decide who is to be treated as 'tenant'. Therefore, if 'heir' is to include a legatee of the will then the above-quoted words cannot be applied in case of a tenant who leaves behind more than one legatee for in that case the wishes of the testator can get supplanted, on the landlord's unwillingness to respect the same, by the ultimate decision of the court. In other words, in case of a testamentary disposition, where the wish or will of the deceased has got to be respected a decision by the court will not arise and that would necessarily mean that the words quoted above will be rendered nugatory. What we want to emphasise is it is not the heirship but the nature of claim that is determinative. In our considered view the legislature could not have intended to confer such a right on the testamentary heir. Otherwise, the right of the landlord to recover possession will stand excluded even though the original party (the tenant) with whom the landlord had contracted is dead. Besides, a statutory tenancy is personal to the tenant. In certain contingencies as contemplated in section 5(11)(c)(i) certain heirs are unable to succeed to such a tenancy. To this extent, a departure is made from the general law."

5. The Apex Court in **Ganpat Ladha Vs. Shashikant Vishnu Shinde** AIR 1978, S.C., 955, while considering the word "tenant" read with the provisions of Section 5(11)(c) of the Bombay Rent Act, held that non heirs of the original tenant who were not residing in the premises cannot claim to be a tenant. This judgment no way supports the case of the petitioners-tenants to

claim protection under the Bombay Rent Act, even though they are residing in the premises being the heirs of the original tenant in the facts and circumstances of the case. This judgment has been further considered in **Baldev Sahai Bangia Vs. R.C. Bhasin** AIR 1982, S.C., 1091, while dealing with the similar provisions of the Delhi Rent Control Act. Therefore, the definition of "family" as relied by referring to this judgment by the learned counsel appearing for the petitioners, cannot be extended for the purpose of interpreting the provisions of the Bombay Rent Act in question. The facts and circumstances are totally distinct and distinguishable. In the present case, Section 5(11)(c), as elaborated by the Apex Court in **Vasant** (supra) and also by the Bombay High Court in **Kanti Bhattacharya & Ors. Vs. K.S. Parmeshwaran & Anr.** 1993, Mh.L.J., 1521 further clinches the issue against the petitioners-tenants and those observations are :

> "I am inclined to hold that under section 5(11)(c) an agreement need not be in writing. An agreement amongst members of the tenant’s family can be inferred on the basis of the conduct of the parties."
>
> "Notwithstanding this nobody raised any objection till they were brought on record as legal heirs or legal representatives. Even the objection raised is so cryptic that nowhere it is contended by them that there were no agreements arrived at by

> them amongst the members of the tenant's family."

In the present case, therefore, as observed, in absence of any agreement in writing and considering the conduct and the background, as referred above, there remains no doubt that petitioner No.1 has been recognised by the respondent-landlord as a tenant, as contemplated under the Bombay Rent Act. Petitioner No.2, even though residing in the said premises, was never recognised as a tenant. Therefore, a case of unauthorised subtenancy is also made out by the respondents. The Apex Court in (2005) 1 S.C.C., 31 **Joginder Singh Sodhi Vs. Amar Kaur** has on similarly placed circumstances, accepted the case of sub-tenancy as the landlord never recognised other relative/brother as tenant or authorised sub-tenant.

6. So far as acquisition of suitable accommodation is concerned, in the present case there is no doubt that petitioner No.1, who is recognised tenant for the purpose of Bombay Rent Act and as accepted by the respondent-landlord, left the premises as he has acquired the suitable accommodation as contemplated under the Bombay Rent Act. The landlord, therefore, as observed by the Appellate Court, is rightly entitled for the decree of possession on this ground also. The

reliance on **Jayantilal Kanjibhai (deceased by L.Rs.) and ors. Vs. Rameshchandra Uttamram** AIR 2001 Guj. 188 by the petitioners, in no way supports the submissions as, in that case, the tenant's wife had acquired the suitable accommodation. In the present case, the question is to consider the right of petitioner No.1-tenant and not of petitioner No.2 who, according to the respondent-landlord, is a sub-tenant. In this background, another judgment of the Bombay High Court **Pramila Madhav Damle and ors. Vs. Waman R. Koparde** 1999 (1), Mh.L.J., 831 also does not support the petitioners' case as that was a case of acquisition of the premises by the wife of the petitioner-tenant again. Both these cases are distinct and distinguishable on facts. The counsel for the landlord-respondent relied on **Mrs. Radhabai Dolatrai Dave & Ors. Vs. Mrs. Padma Kilawala & Ors.** AIR 1993, S.C., 1765 in support of his submission, referring to Section 13(1)(k) and Section 13(1)(l) of the Bombay Rent Act on the concerned issue of the tenant acquiring the suitable accommodation. In that case the High Court refused to interfere with the finding and judgment of the Appellate Court and the Apex Court also confirmed the same.

7. The contention about the joint tenancy, based

on **Ashok Chintaman Juker & Ors. Vs. Kishore Pandurang Mantri & Anr.** (2001) 5, S.C.C., 1 is not correct. In the present case, there is no material on the record to justify that there was joint tenancy created at any point of time and that the respondent-landlord has recognised the entire family of the original tenant as tenants for the purpose of the Bombay Rent Act.

8. In **Ashok Chintaman** (supra), the Apex Court, while dealing with the provisions of Section 5(11)(a) of the Bombay Rent Act, observed as under:

> "In the present case we are concerned with clause (c) of sub-section (11) of Section 5 which provides that "tenant" includes any member of the tenant's family residing with him at the time of his death as may be decided in default of agreement by the court. There are two requisites which must be fulfilled before a person is entitled to be called a "tenant" under clause (c); firstly, he must be a member of the tenant's family and secondly, he must have been residing with the tenant at the time of his death. Besides fulfilling these conditions he must have been agreed upon to be a tenant by the members of the tenant's family; in default of such agreement the decision of the court shall be binding on such members."

In the said case, there was a joint tenancy and, therefore, the notice to one tenant as issued by the landlord was said to be invalid notice for the purposes

of termination of tenancy. The said judgment, therefore, in fact supports the case of the respondent-landlord, specially the observation pertaining to Section 5(11) of the Bombay Rent Act as reproduced above. The learned counsel appearing for the respondent-landlord has relied on **Rajendraprasad Kedarprasad Tiwari Vs. Shankar Vithu Kuveskar** 2002 (3), Mh.L.J., 498 to support his case that alongwith the tenant, some other relatives, even if they are staying, that itself cannot convert the tenancy from his name into a joint family tenancy unless the landlord, at the time of letting of the premises, had given the premises to the joint family. In the present case, as observed, there is no such case made out of the tenancy to the joint family and/or any such relationship with petitioner No.2.

9. The respondent-landlord, therefore, submitted that there is no case made out to interfere with the finding given by the Appellate Court under Article 227 of the Constitution of India and further relied on **Kachardas Shankarlal Karva Vs. Shrikrishna Laduram Sharma** 2005 (1), Mh.L.J., 625 to dismiss the Writ Petition filed by the petitioner as the reasoning given by the Appellate Court are within the framework of law

and the record. The respondent-landlord’s submission, therefore, need to be accepted, specially in view of the finding given by the Appellate Court, based on the above referred provisions and facts. The view taken by the Appellate Court, therefore is a possible and plausible view. The decree of eviction, as granted by the Appellate Court, therefore, does not warrant interference in the present Writ Petition. The landlord in the present case, therefore, succeeds in establishing the grounds of eviction which has been considered by the Appellate Court and granted accordingly.

10. Taking into account the above reasoning, the Writ Petition is dismissed. Rule is discharged. Interim relief stands vacated. However, there shall be no order as to costs.

[ANOOP V. MOHTA, J.]

[srpasha@hc]